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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1347 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BANUBHAI ABDEALI KHAKHARIAWALA

Versus

MUHFAJABAI WD/O. ISAKALI TAYABALI BHATIA  
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Appearance:

MR RN SHAH for Petitioners

MR MITUL K SHELAT for Respondent No. 1, 2, 3, 4, 5  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/03/2000

ORAL JUDGEMENT

#. The petitioners are the plaintiffs of Regular Civil Suit No.. 19 of 1981 filed in the Court of the learned Civil Judge (JD) Dahod for getting a decree for possession of the suit premises which is situated in

Bhoiwad at Dahod.

#. It is the case of the plaintiffs that the suit shop bearing CTS No.3503 situated in Bhoiwad at Dahod is of the ownership of the plaintiffs. That the defendant is the tenant of the same. That he has not paid the rent from 1.4.80 to 30.9.80. That he is in arrears of rent for more than 6 months. It is also the case of the plaintiffs that they require the suit premises for bonafide requirements. It is also the case of the plaintiffs that they want to demolish the suit premises and make new construction including a first floor on the suit premises. Before filing the suit the plaintiffs had served a notice of demand on the defendant demanding the arrears of rent but the plaintiff did not comply with the same. Therefore, the aforesaid suit was filed by the plaintiffs.

#. The defendants appeared in the suit and filed written statement at exh.20. It was stated that the plaintiffs have no right to file the suit. It was denied that the defendant was in arrears of rent. That the standard rent of the suit premises is only Rs. 12/- per month. Thus the suit of the plaintiffs was resisted by the defendant on the aforesaid grounds.

#. The plaintiffs also filed Civil Misc. Application No. 8/81 under section 13A of the Bombay Rent Act for getting permission from the court for making additional construction on the suit shop.

#. The Trial Court framed various issues at exh.22.

#. However, at the time of hearing of this Application before the Trial Court, the plaintiffs had given up the case regarding getting a decree on the ground of arrears of rent and the claim of bonafide requirement was also not pressed into service. So the main grounds on which the suit was contested before the Trial Court was regarding standard rent as well as regarding permission to the plaintiff for constructing upper floor on the suit shop.

#. After recording the evidence and after hearing the arguments of both the sides the Trial Court came to the conclusion that the standard rent of the suit premises is Rs.40/- p.m. The Trial Court also came to the conclusion that the defendant will suffer greater hardship if the

plaintiffs are allowed to construct upper floor on the suit premises. Accordingly the Trial Court dismissed the suit and had also disposed of the Civil Misc.Application which was given by the plaintiff for permission under section 13A of the Bombay Rent Act.

#. The plaintiffs carried the matter further by filing Civil Revision Application No.9 of 1982 before the learned District Judge, Panchmahals at Godhra. Aforesaid Revision Application was filed against the order passed by the Trial Court below Civil Misc.Application No. 8 of 1981 filed in Regular Civil Suit No. 19 of 1981. The learned District Judge, Panchmahals at Godhra by his order dated 26.4.83 dismissed the said Revision Application. The plaintiffs have filed this 2nd Revision Application before this Court against the order of the Distict Court passed in Revision Application.

#. I have heard the learned advocates for both the sides. The only point which is required to be considered is whether the courts below have rightly decided the application under section 13A of the Bombay Rent Act.

Section 13A reads as under:

" 13A. Where the landlord proposes to make any improvement in, or construct any additional structure on, any building which(or part of which) has been let to a tenant, and the tenant refused to allow the landlord to make the improvement or construct such additional structure, if the Court on an application made to it in this behalf by the landlord, is satisfied that such work will not cause undue hardship to the tenant, the court may permit the landlord to do such work and may make such other order as it thinks fit in the circumstances of the case."

##. The learned Appellate Judge while deciding the Revision Application has given detailed reasoning in para 16 of his judgment in which he has considered the past as well as the new construction which the landlords wants to construct as well as the question of hardship to the defendant. It has been found that the entry of the landlords would be necessary in the suit premises and that there is no provision under section 13A of the Bombay Rent Act by which the possession can be given to the landlord even for a temporary period. It is found that the new construction requires making of pillars and

possession will be required to be handed over by the tenant. Under such circumstances it was found that section 13A of the Bombay Rent Act was not the proper remedy. Considering the provisions of law it is clear that if the landlord was interested in reconstructing the property he should invoke section 13(1)(i) of the Bombay Rent Act by filing prescribed application. In the facts and circumstances of the case section 13A is not applicable . I therefore, do not find any error or infirmity in the order or any error of jurisdiction which can be said to have been committed by the revisional court while disposing of Civil Revision Application No. 9/82. In that view of the matter, there is no substance in this Revision Application and the same requires to be dismissed. Accordingly this Revision Application is dismissed. Rule is discharged. Interim relief if any granted earlier stands vacated. No order as to costs.

(P.B.Majmudar.J)

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